

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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DAVID C. HOBSON and D.C.  
HOBSON, DDS, MS, a  
professional corporation,

Plaintiffs,

NO. CIV. S-02-0886 WBS PAN  
NO. CIV. S-06-1805 WBS EFB  
CONSOLIDATED

v.

ORDER

ORTHODONTIC CENTERS OF  
AMERICA, INC. and ORTHODONTIC  
CENTERS OF CALIFORNIA, INC.,

Defendants.

ORTHODONTIC CENTERS OF  
CALIFORNIA, INC.,

Plaintiff,

v.

DAVID C. HOBSON, D.D.S., M.S.  
and D.C. HOBSON, D.D.S., M.S.,  
a professional corporation, \_\_\_\_\_

Defendants. \_\_\_\_\_

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1 Hobson is entitled to recover the full amount of the  
2 judgment in his breach of contract action against OCA and OCC.  
3 In return, OCA is entitled to recover the amounts owed by Hobson  
4 on the three underlying promissory notes. Hobson has always  
5 acknowledged liability on the notes and has asked only that the  
6 amounts due on the notes be applied as a setoff against his  
7 recovery for the breach of contract.

8 OCA and OCC have steadfastly refused Hobson's offers to  
9 offset their claims on the promissory notes against his judgment  
10 in the breach of contract action. Instead, OCC filed a complaint  
11 to recover on the promissory notes in the California Superior  
12 Court in San Joaquin County. Then OCC filed bankruptcy, and  
13 while the automatic stay prevented Hobson from asserting his  
14 offset, OCC moved for summary judgment in the state case. Before  
15 the state court could dispose of this matter, OCC removed the  
16 case to this court on the grounds that it is a "core proceeding"  
17 in the bankruptcy. OCC then filed a motion to transfer venue of  
18 this case to the United States Bankruptcy Court for the Eastern  
19 District of Louisiana, which this court denied on January 9,  
20 2007. (January 9, 2007 Order 5.)

21 OCA and OCC's goal in throwing all of these procedural  
22 hurdles in the way of Hobson's efforts to offset these claims is  
23 transparent. The \$270,360 bond posted by OCA in Case No. Civ. S-  
24 02-0886 would be insufficient to satisfy Hobson's total judgment  
25 for \$444,538.88.<sup>1</sup> OCA and OCC hope to satisfy their own judgment  
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27 <sup>1</sup> The court adopts the calculation in Exhibit J to the  
28 Declaration of Matthew C. Bradford for the interest on the  
judgment in Case No. Civ S-02-0886 through August 6, 2007. As of

1 for \$104,662.45<sup>2</sup> on the notes by levying on Dr. Hobson's assets,  
2 and then force him to find a way to satisfy the balance due on  
3 his judgment against them - a task which they obviously intend to  
4 make as difficult as possible.

5 Fairness and equity dictate that these claims be offset  
6 against each other. The claims arise out of the same set of  
7 underlying facts and contractual obligations and are due to and  
8 from the same parties. The gamesmanship must end sometime, and  
9 that time is now. OCA and OCC are cautioned against making any  
10 futile motions for reconsideration of this order. It is the  
11 considered judgment of this court, after considering all of the  
12 arguments raised by counsel. If OCA and OCC believe it is  
13 entered in error, they of course may exercise their right of  
14 appeal.

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15 August 6, 2007, the judgment owed the Hobson's in Case No. Civ.  
16 02-0886 was \$443,323.69.

17 28 U.S.C. § 1961 provides that "interest shall be  
18 calculated from the date of the entry of the judgment, at a rate  
19 equal to the weekly average 1-year constant maturity Treasury  
yield, as published by the Board of Governors of the Federal  
Reserve System, for the calendar week preceding the date of the  
judgment." The interest rates for the relevant period are  
20 4.78% for the week ending August 10, 2007  
21 4.44% for the week ending August 17, 2007  
22 4.16% for the week ending August 24, 2007.

23 Applying the Federal Reserve rate on the following  
24 schedule 4.78% for 4 days, 4.44% for 7 days, and 4.16% for 12  
25 days, the average daily interest rate for these twenty-three days  
26 is 4.35%, resulting in a daily increase of Hobson's judgment in  
27 Case No. Civ. 02-0886 of \$52.83 or an increase of \$1,215.19.

28 <sup>2</sup> The court adopts the calculation in Exhibit H to the  
Declaration of Matthew C. Bradford for the interest on the  
promissory notes through August 6, 2007. The combined interest  
on the promissory notes due OCC is \$21.02 per day. The court  
accordingly awards a further \$483.46 on the promissory notes to  
account for the twenty-three extra days from August 6, 2007 to  
the date of this order.

1 IT IS THEREFORE ORDERED that:

2 (1) Cases No. Civ. S-02-0886 and S-06-1805 are hereby  
3 CONSOLIDATED.

4 (2) Hobson's motion for summary judgment in Case No.  
5 Civ. S-06-1805 is GRANTED, and judgment shall be entered against  
6 Hobson in amount of \$104,662.45 in that action.

7 (3) Hobson's request to offset the judgment against him  
8 in Case No. Civ. S-06-1805 against the judgment in Case No. Civ.  
9 S-02-0886 in which OCA and OCC are the judgment debtors and  
10 Hobson is the judgment creditor is GRANTED. The \$104,662.45  
11 judgment in Case No. S-06-1805 is ordered off-set against the  
12 \$444,538.88 judgment in Case No. Civ. S-02-0886. The resulting  
13 net judgment in favor of Hobson in these consolidated actions is  
14 therefore \$339,876.43.

15 (4) plaintiffs' motion for enforcement of judgment  
16 against security in Case No. Civ. S-02-0886 is hereby GRANTED.

17 LET JUDGMENT BE ENTERED ACCORDINGLY.

18 DATED: August 29, 2007

19   
20 WILLIAM B. SHUBB

21 UNITED STATES DISTRICT JUDGE

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